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**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
EMERGENCY NUMBER SYSTEMS BOARD**

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January 5, 1995

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Notice of Proposed Rule Making
CC Docket No. 94-102
RM-8143

Gentlemen:

The Maryland Emergency Number Systems Board would like to take this opportunity to provide comments on the revision of the Commission's rules ensuring compatibility with E9-1-1 emergency calling systems.

The eleven-member Emergency Number Systems Board (ENSB) was created in the 1979 session of the Maryland General Assembly as an agency to coordinate the establishment and enhancement of 9-1-1 systems in Maryland's 23 counties and Baltimore City. All 24 jurisdictions had a 9-1-1 system in place by July 1, 1985. The ENSB has devoted many hours to this immense task, and has also committed a great deal of funding to 9-1-1. We continue to work with the county governments, providers of telephone service, and other related parties, to provide an Enhanced 9-1-1 system in all 24 Maryland jurisdictions by July 1, 1995.

The lack of location information on wireless calls is a deep concern we share with the rest of the 9-1-1 community. Callers who don't know their exact location have come to rely on 9-1-1 to help them through the information provided in an enhanced system. We must also be able to do this with wireless phone callers.

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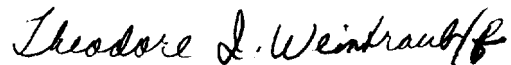
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Office of the Secretary
January 5, 1995
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There are a number of issues raised in the Notice of Proposed Rule Making with which the ENSB is in complete agreement, and other issues that the ENSB feels are better addressed by other interested parties. Listed on the enclosed are comments on those topics which have raised some concern to us; we take no issue with those on which we have not commented. If the ENSB can supply additional information or answer any questions, our members can be reached through our 9-1-1 Coordinator, Marilyn Farndon, at the above address and phone.

We appreciate your consideration of our comments.

Very Truly Yours,

A handwritten signature in cursive script, reading "Theodore I. Weintraub".

Theodore I. Weintraub
Chairman, Maryland Emergency
Number Systems Board

TIW:f
enclosures

FCC NOTICE OF PROPOSED RULE MAKING

CC DOCKET NO. 94-102 RM-8143

COMPATIBILITY WITH ENHANCED 9-1-1 EMERGENCY CALLING SYSTEMS

The Maryland Emergency Number Systems Board (ENSB) appreciates this opportunity to comment on the above referenced Notice of Proposed Rule Making. After a review of the document, the ENSB takes no issue with those portions on which we have not offered a comment. The following comments are offered for your consideration.

Before commenting on the sections where comments are requested, the ENSB wishes to offer the following opinion on the information provided in Item 15 - differing positions on how compatibility may be best achieved.

Without adoption of an industry standard, we can go on forever with meetings and no resolution; therefore, the FCC should adopt minimum standards now that provide PSAPs having E9-1-1 capability the billing name and address of caller, telephone number calling from, and location. Market competition can be left to create any features beyond this. The ENSB believes that the FCC should delay any order on this issue pending adoption of such minimum standards.

Item 21 - A portion of Item 21 asks for comments "on whether there are particular difficulties in applying the proposal to college campuses, hospitals, military installations or wireless PBXs, and on whether the proposed rules must be applied where the equipment serves a physically small location, such as a single story building, or a small number of closely situated telephone stations."

The ENSB has granted permission to a large college campus to have emergency 9-1-1 calls from campus phones via PBX terminate at a 24-hour college police department which maintains a specific database for all campus locations. Fire, ambulance and rescue calls received at this location are immediately transferred to the county PSAP which is charged with the responsibility of dispatching appropriate equipment. 9-1-1 calls dialed from pay phones on campus go direct to the county PSAP.

The ENSB is convinced that this is the best method in this instance and would not want to see FCC ruling force a change to this Board decision. The ENSB favors retention of this authority to grant the right to allow a campus to have their own internal PSAP under the strict guidance of the state's ENSB.

We feel that this ruling should apply to all resellers of residential service regardless of size, and also to any other PBX having 100 or more stations. This would eliminate the need for the small office with 20 desks in a room, operating on a PBX, having to comply with the regulation.

Item 23 - Attendant Notification - The ENSB agrees that a third party on the line to provide specific information is often very helpful and agree with the fee proposal to require PBX equipment to be capable of same. However, there are instances where voice level drops significantly with a third party on the line and the PSAP will exercise judgment in these instances.

Inasmuch as this section concerns Attendant Notification, we wish to offer comment on statements in Item 16 regarding the blocking of calls in favor of an internal safety service.

As mentioned, we have permitted a large college campus which handles police calls internally to be, in essence, its own PSAP with 9-1-1 dialed calls terminating at the college police department. Authority from the ENSB must be given to do so, and only when the ENSB has approved the completed application of the requesting PBX party, and the county in which it resides approves, is this granted. As a prerequisite, the requesting party must have adequate 24-hour service and be officially recognized by the Maryland Police Training Commission or the Maryland Fire Training Commission. Checks and balances to assure compliance with these requirements are in place.

We feel any state having a government-appointed body with jurisdiction of statewide 9-1-1 should retain the authority to make the final decision on applicants wishing to have (9)9-1-1 dialed calls reach an on-site PSAP.

Further in Item 16, "Adcom notes that the enhanced 9-1-1 trunking mentioned in its petition was not intended to require PBXs to have dedicated trunks to PSAPs."

The ENSB is very much opposed to PBXs having dedicated trunks to PSAPs. The cost to a PSAP for such an arrangement would be immense. These calls must be handled the same as any other 9-1-1 call.

Item 25 - The ENSB feels that "accurate and timely" is non-specific and that ALI data base information must be concurrent with the voice portion of the call.

Item 38 - The ENSB feels that "mobile radio services" is too broad a title. We agree, however, that private radio services not available to the public or interconnected with the public switched network should not be included and should be limited to services capable of providing real-time voice.

Item 56 - Privacy - In April 1984 the ENSB petitioned the Maryland Attorney General's Office for an Opinion regarding the release of information surrounding 9-1-1 calls. Enclosed is a copy of that Opinion. As you will note, recordings of 9-1-1 dialed calls are public records under the PIA; the portion of any recording containing medical or psychological information about an individual may not be disclosed; disclosure contrary to the public interest may be withheld; and all other recordings must be disclosed upon request except in the extraordinary situation in which a court is asked to withhold otherwise available information.

The ENSB feels this is an issue that should be addressed by each individual state, and that the same policy be effective for wireless and non-wireless calls.

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April 4, 1986

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JAN 06 1985

Mr. John G. Rouse, III
Chairman
Emergency Number Systems Board
6776 Reisterstown Road
Baltimore, Maryland 21215

DEPARTMENT OF PUBLIC SAFETY &
COMMUNICATION SERVICES

Dear Mr. Rouse:

You have requested our opinion on whether tape recordings of calls to 911 Emergency Telephone System centers are subject to the disclosure requirements of the Maryland Public Information Act (the "PIA") and, if so, whether there are any circumstances under which disclosure may or must be denied.

For the reasons stated below, we conclude that:

1. Recordings of calls to 911 Emergency Telephone System centers are "public records" under the PIA.
2. The portion of any recording that contains medical or

OPINION OF THE ATTORNEY GENERAL

Cite as: 71 Opinions of the Attorney General (1986)
[Opinion No. 86-025 (April 4, 1986)]

psychological information about an individual may not be disclosed.¹

3. Recordings of calls for police assistance may be withheld from disclosure, but only if disclosure would be contrary to the public interest.

4. All other recordings must be disclosed upon request, except in the extraordinary situation in which a court is asked to withhold otherwise available information.²

I

911 Emergency Telephone System

The 911 Emergency Telephone System was established in Maryland by Chapter 730 of the Laws of Maryland of 1979. That statute, now codified at Article 41, §§204H-1 through 204H-8 of the Maryland Code, was enacted in response to the General Assembly's finding of a need "to eliminate delays [in citizens' summoning appropriate emergency aid] caused by lack of familiarity with emergency numbers and by understandable confusion in circumstances of crisis." Article 41, §204H-1(d).³ To that end, the General Assembly established the number 911 as "the primary emergency telephone number for the State of Maryland." Article 41, §204H-1(e).

As of July 1, 1985, a 911 system was in operation in Baltimore City and in each of Maryland's counties. Maryland thus became the second state to have a 911 system in effect statewide.⁴

¹ See also Part III D 2 below, which discusses the possible nondisclosure of "sociological information."

² This opinion confirms the substance of a prior advice letter on this issue. Letter from Dennis M. Sweeney, Deputy Attorney General, to Russell E. Wroten, Chief of Police of Cambridge, Maryland (June 26, 1984).

³ The General Assembly "recognize[d] that [emergency] assistance is almost always summoned by telephone and that a multiplicity of emergency telephone numbers exist[ed] throughout the State and within any one county" and expressed its "concer[n] that avoidable delays in reaching appropriate emergency aid [were] occurring to the jeopardy of life and property." Article 41, §204H-1(b) and (c).

⁴ As it happens, Maryland was preceded by our good neighbor Delaware - which has, of course, historically prided itself on being the "first state."

The 911 system in each jurisdiction provides citizens with easy emergency access to police, fire fighting, and emergency ambulance services. When the 911 number is dialed, the caller automatically reaches a public safety answering point operated around the clock in the county where the call is made. Personnel at that answering point determine the nature of the emergency and route the call to the appropriate agency for response or directly dispatch the needed assistance.

The county systems are overseen by the Emergency Number Systems Board, which must approve all local plans for the installation or expansion of 911 systems and review and coordinate their operation. The minimum requirements for 911 systems established by the Board include electronic recording, with playback capability, of all incoming calls. COMAR 12.11.03.05E and F.⁵ The tapes themselves are physically maintained in the local 911 emergency communication centers.

II

Public Information Act Disclosure Requirements

The PIA, codified at §§10-611 through 10-628 of the State Government Article ("SG" Article), is designed to afford the public a general right of "access to information about the affairs of government and the official acts of public officials and employees." SG §10-612(a). To that end, the PIA requires that, "[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." SG §10-613(a).⁶

A "public record" is any documentary material - expressly including a tape recording - that "is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business." SG §10-611(f). Thus, the PIA applies to all the records of every agency

⁵ The taping of such emergency telephone calls is lawful, notwithstanding the general prohibition against wiretapping, under §10-402(c)(4) of the Courts Article.

⁶ The "custodian" of a public record is the governmental officer or employee who is responsible for keeping the public record or who actually has physical custody and control of the record. SG §10-611(c). Because the Emergency Number Systems Board does not itself operate any 911 system nor receive physical custody of any of the local systems' tapes, it is not the custodian of those tapes. Therefore, any request for access to those tapes must be directed to the local government officials or employees who operate the 911 systems in the various political subdivisions.

that carries out governmental functions, whether on the State or local level. See A.S. Abell Publishing Co. v. Mezzanote, 297 Md. 26 (1983).

In light of the PIA's broad scope, there is no question that the 911 emergency centers operated by the counties are governmental agencies subject to the PIA and that the tape recordings of telephone calls to those centers are public records within the meaning of the PIA. Thus, unless the recordings are specifically exempted from the PIA's disclosure requirements, they must be made available to anyone who requests them. Superintendent, Maryland State Police v. Henschen, 279 Md. 468 (1977). See also 61 Opinions of the Attorney General 702, 705 (1976) (clerk of court may not deny access to marriage records, regardless of their intended use by person seeking inspection).

III

Exceptions to Disclosure

A. Introduction

Despite the PIA's general purpose to permit broad public access to public records, the Act contains a number of provisions that require or permit a custodian to deny requests for inspection of records. Those exceptions should, as a general matter, be construed narrowly, to promote public access to information about governmental activities.

At the same time, the PIA recognizes that the public's right to information is counterbalanced by the right to privacy of individuals who are subjects of governmental records. SG §10-612(b) accordingly provides that, "unless an unwarranted invasion of the privacy of a person in interest would result, [the PIA] shall be construed in favor of permitting inspection of a public record."⁷ Particular calls for emergency assistance might well reveal intimate personal information about the caller or others. In those circumstances, we think that releasing the record to anyone other than the person in interest would be "an unwarranted invasion of [that person's] privacy." Consequently, when the applicant seeking disclosure of such a call is not the person in interest, the PIA's exceptions can and should be construed somewhat more liberally than would otherwise be the case.

⁷ The "person in interest" with regard to a public record is any person who is the subject of the records, or that person's designee or legal representative. SG §10-611(e).

B. Privileged or Confidential Records

Public records must be withheld from disclosure to the extent that (i) the information they contain is made "privileged or confidential" by law or (ii) inspection of a particular record would be contrary to State or federal law, the rules adopted by the Court of Appeals, or a court order. SG §10-615. However, none of those exceptions applies to the recordings of calls made to 911 centers. While callers might prefer that their calls be kept confidential, the requirement that "privileged or confidential" records be withheld from public inspection, by its terms, applies only to records protected by common-law or statutory privileges, such as the attorney-client or psychiatrist-patient privilege, or by other confidentiality requirements. See, e.g., 66 Opinions of the Attorney General 98, 103 (1981); 64 Opinions of the Attorney General 236, 239 (1979). Nor does any federal or State law or court rule generally prevent inspection of calls to 911 centers. Cf. 7 U.S.C. §2020(e) (limiting disclosure of information concerning food stamp recipients).⁸

C. Other Personal Records

The PIA itself requires that certain enumerated records not otherwise made confidential be withheld from public inspection. SG §10-616. However, records of calls for emergency assistance are not included in that list of protected records. Records of calls to 911 centers are therefore not automatically and wholly exempt from disclosure under that section.

D. Personal Information

1. Medical and psychological information

The PIA requires that certain specific types of information be withheld from public disclosure. SG §10-617(b) requires a custodian to "deny inspection of the part of a public record that contains medical or psychological information about an individual." In our view, statements concerning an injured or ill person's symptoms or condition, provided to a 911 center operator for the purpose of obtaining appropriate emergency

⁸ Article 27, §739 prohibits disclosure or review of expunged police records pertaining to a criminal proceeding. However, those records by definition do not include "investigatory files [or] police work-product records used solely for police investigation purposes." Article 27, §735(e). That exclusion clearly encompasses records of calls for police assistance.

April 4, 1986 ..

medical care, are "medical or psychological information" that must be withheld.

The inclusion of such information in a public record does not preclude public access to the entire record, however - it is only the part that contains the protected information that must be withheld. Therefore, if access to a tape is requested, the tape must be reviewed to determine whether portions of it contain information that must be deleted before the tape's release.⁹

2. Sociological information

SG §10-617(c) requires that "sociological information" be withheld, if - but only if - "the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection." Although the PIA does not provide further guidance, the apparent intent is to permit the protection of the kind of personal information that a person would disclose only under the conditions of confidentiality that customarily attend sociological studies. Thus, for example, the Department of Public Safety and Correctional Services has defined "sociological data," with respect to parole and probation authorities, as including "[p]ersonal relationships, beliefs, values, etc.," and "[r]eligious preference and attendance." COMAR 12.11.02.02M(2) (a) and (g). The Emergency Number Systems Board might wish to consider the preparation of a model regulation along these lines.

E. Discretionary Nondisclosure

In addition to requiring that certain records or information be withheld from public inspection, the PIA also grants custodians discretion to deny inspection of particular parts of specified records if inspection by the applicant "would be contrary to the public interest." SG §10-618(a). That section, like SG §10-616, applies only to the records specifically there designated. Those include "records of investigations conducted by ... a State's attorney, ... a police department, or a sheriff" and "an investigatory file compiled for any other law enforcement ... purpose." SG §10-618(f)(1)(i) and (ii). In our view, recordings of calls to 911 centers for police assistance generally are not "records of an investigation conducted by" a law enforcement agency, but they are part of "an investigatory file compiled for any other law enforcement ... purpose."

⁹ We direct your attention also to SG §10-614(b)(3), under which an applicant must be given prompt written notice of the reasons and authority for any denial of a disclosure request and of the procedures for review of the denial that are available to the applicant.

1. Records of investigations

In 63 Opinions of the Attorney General 543, 547 (1978), this office concluded that arrest logs are not "records of investigations" because they "merely reflect the end result of a police investigation. They contain no information whatever concerning the actual investigation." At the same time, the Attorney General noted that "should such records contain such investigatory material, they may very well be subject to the [SG §10-618(f)(1)(i)] exception." Id. The same is true, in our opinion, of records of calls to 911 centers for police assistance.

A call to a 911 center does not directly convey any information to law enforcement officials. The centers are not themselves part of any of the agencies enumerated in SG §10-618(f)(1)(i), and the 911 operator who takes a call simply dispatches needed police assistance to the location indicated. Only on rare occasions do law enforcement officials review the recording of such a call as part of an investigation. Thus, like arrest logs, records of calls to 911 centers ordinarily "contain no information whatever concerning the actual investigation" conducted by a law enforcement agency. Should the record of a call actually be used in an investigation, however, it would be a record of the investigation.

2. Investigatory files

However, we think that records of calls for police assistance are part of "an investigatory file compiled for any other law enforcement ... purpose," within the meaning of SG §10-618(f)(1)(ii). Those calls trigger an investigation, at least to the extent of a police response to ascertain whether further law enforcement action is needed. In our view, the recorded complaint that triggers such an investigation is part of an "investigatory file." And the records of calls to 911 centers are compiled for the law enforcement purpose of ensuring that police assistance is promptly dispatched in an emergency.

Federal courts construing the analogous exception in the Freedom of Information Act (the "FOIA") have held that letters triggering agency investigations are covered by that exception.¹⁰

¹⁰ As originally enacted, the FOIA exception authorized nondisclosure of "investigatory files compiled for law enforcement purposes except to the extent available by law to a private party." See NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 221-22 (1978). It now authorizes nondisclosure of "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would" harm specified governmental interests. 5 U.S.C. §552 (b)(7). Under the FOIA, the term "investigatory records" is narrower than "investigatory files." See 437 U.S. at 229-30.

E.g., Evans v. Department of Transportation, 446 F.2d 821, 824 (5th Cir. 1971) (letter inquiring how to bring pilot's abnormal behavior to attention of proper authorities was part of investigatory file); Luzaich v. United States, 435 F. Supp. 31, 34, aff'd per curiam, 564 F.2d 101 (8th Cir. 1977) (unsolicited anonymous tip advising Internal Revenue Service to audit taxpayer was investigatory record).

The Court of Appeals has held that FOIA decisions are persuasive as to the interpretation of the PIA. Faulk v. State's Attorney, 299 Md. 493, 506 (1984). Hence, Maryland courts would, we think, likewise conclude that the records of complaints that trigger investigations constitute "an investigatory file," whether they are embodied in tape recordings or written communications.

However, the conclusion that 911 calls for police assistance are an "investigatory file compiled for [a] law enforcement purpose" does not by itself mean that the recordings may be withheld. First, if the applicant is a person in interest, nondisclosure is authorized only to the extent that disclosure would cause one of the harms specified in SG §10-618(f)(2). See generally 64 Opinions of the Attorney General 236, 241-43 (1979) (discussing grounds for nondisclosure of investigatory records). Moreover, any other person is entitled to access unless the custodian has reason to conclude that inspection of the record "would be contrary to the public interest." SG §10-618(a). In considering "the public interest," the custodian should also take account of the harms specified in SG §10-618(f)(2). See Attorney General's Office, Public Information Act Manual 28 (4th ed. 1985). In particular, the custodian should consider whether the information on the recording is such that disclosure would "constitute an unwarranted invasion of personal privacy."

F. Court-Ordered Nondisclosure

Finally, the PIA provides for temporary denial of inspection of any public record when "the official custodian believes that inspection would cause substantial injury to the public interest." SG §10-619(a). The official custodian must petition the circuit court for an order permitting continued nondisclosure within 10 days of the original denial under this section. The person who sought access to the record must be notified of that action and has the right to appear and be heard in the court's proceeding on the petition.

The governmental entity in such a proceeding bears the burden of proving that disclosure would do substantial injury to the public interest. Cranford v. Montgomery County, 300 Md. 759, 780 (1984). Moreover, meeting that burden of proof may be difficult, for the PIA generally "shall be construed in favor of

permitting inspection of a public record." SG §10-612(b). This "extraordinary" procedure is very rarely invoked. See Public Information Manual at 35.

IV

Conclusion

In summary, it is our opinion that:

1. Recordings of calls to 911 Emergency Telephone System centers are "public records" under the PIA.
2. The portion of any recording that contains medical or psychological information about an individual may not be disclosed.
3. Recordings of calls for police assistance may be withheld from disclosure, but only if disclosure would be contrary to the public interest.
4. All other recordings must be disclosed upon request, except in the extraordinary situation in which a court is asked to withhold otherwise available information.

Very truly yours,

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